

Robert F. Hochwarth
General Attorney

 **Chessie System**

8679
RECORDATION NO. Filed & Recorded

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
~~216-861-2200~~

REGISTERED MAIL
Return Receipt Requested

216-623-2405
January 19, 1977

Mr. Robert L. Oswald, Secretary
INTERSTATE COMMERCE COMMISSION
12th Street and Constitution Ave. N.W.
Washington, D.C. 20423

7-027A012
JAN 27 1977
Date
Fee \$ 50-

ICC Washington, D. C.

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations, I enclose for filing and recording six counterparts of an Agreement dated as of February 1, 1977 between Midwest Freight Car Company and The Baltimore and Ohio Railroad Company. The Agreement is an interim user agreement allowing B&O to use the hopper cars pending completion of permanent financial arrangements.

Set out below are the names and addresses of the parties to the transaction:

Bailor: Midwest Freight Car Company
P.O. Box 279
Clinton, Illinois 61727

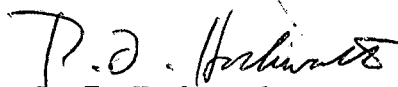
Bailee: The Baltimore and Ohio Railroad Company
2 North Charles Street
Baltimore, Maryland 21201

The equipment covered by the enclosed documents consists of 57 100-ton 1860 cu. ft. ferro alloy hopper cars with covers, to bear Bailee's road numbers 250028 - 250084, inclusive, AAR mechanical designation HMSR. The above equipment will be lettered "Baltimore and Ohio", "B&O", "Chessie", "Chessie System", or in some other appropriate manner and will also be marked:

"BALTIMORE AND OHIO RAILROAD EQUIPMENT TRUST OF 1977,
FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR"

Also enclosed is this Company's draft in the amount of \$50 representing the required recordation fee. Please return four recorded counterparts to the undersigned.

Very truly yours,


R. F. Hochwarth
General Attorney

RFH:ef
Encls.

The Chesapeake and Ohio Railway Company

The Baltimore and Ohio Railroad Company

Interstate Commerce Commission

Washington, D.C. 20423

2/4/77

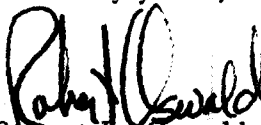
OFFICE OF THE SECRETARY

R.F. Hochwarth, Gen. Atty.
Chessie System, Law Dept.
Terminal Tower
P.O. Box 6419
Cleveland, Ohio 44101

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 1/27/77 at 9:40am, and assigned recordation number(s) 8679

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

EXECUTED IN 6 COPIES

OF WHICH THIS IS NO. 6

8679
REGISTRATION NO. Filed & Recorded

JAN 27 1977 - 9 40 AM
INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of February 1, 1977

Between

MIDWEST FREIGHT CAR COMPANY

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

Covering

57 100-ton 1860 cubic foot ferro
alloy hopper cars with covers

THIS AGREEMENT, dated as of February 1, 1977, by and between
MIDWEST FREIGHT CAR COMPANY ("Builder"), and THE BALTIMORE AND OHIO RAILROAD
COMPANY, a Maryland corporation ("B&O");

W I T N E S S E T H :

The Builder and B&O heretofore entered into a Manufacturing Agreement dated as of February 1, 1977 (a copy of which Manufacturing Agreement is made a part hereof by reference), whereunder the Builder agreed to construct and deliver to B&O, and B&O agreed to accept and pay for:

57 100-ton 1860 cubic foot ferro alloy hopper cars with covers, to bear B&O's road numbers 250028 - 250084, inclusive, AAR mechanical designation HMSR (the "Cars").

Delivery of the Cars by the Builder to B&O is scheduled to begin on or about February 1, 1977. However, inasmuch as B&O has not as yet consummated financing agreements (pursuant to an Equipment Trust Agreement or otherwise), it is not in a position to accept delivery of and pay for the Cars under the terms of the Manufacturing Agreement at this time. B&O represents that such financing arrangements will be consummated, however, on or before April 1, 1977. B&O (in order that it may use the Cars pending completion of the above financing arrangements) has arranged with the Builder to give it temporary custody and possession of the Cars on their completion, solely as a bailee of the Cars, and the Builder is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Builder hereby delivers to B&O and B&O hereby accepts from the Builder the Cars as of the date each of them is delivered to B&O at Decatur, Illinois, or such other place as may be specified by B&O, for the period ending on the earlier of April 1, 1977, or

the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cars shall remain in the Builder and B&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the Bills of Sale. B&O, without expense to the Builder, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, B&O shall do such other acts as may be required by law, or reasonably requested by the Builder, for the protection of the Builder's title to and interest in the Cars.

B&O agrees that it will permit no liens of any kind to attach to the Cars, and that it will

- (a) indemnify and save harmless the Builder from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cars of the Builder because of its ownership or because of the use, operation, management, or handling of the Cars by B&O during the term of this Agreement.

B&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

B&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Builder the purchase price in cash of those Cars which

may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to B&O under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Car, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

"BALTIMORE AND OHIO RAILROAD EQUIPMENT TRUST OF 1977,
FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR"

B&O hereby agrees to indemnify the Builder against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the effective period of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Car, B&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Builder, including the right to receive the purchase price of the Cars as provided in the Manufacturing Agreement, may be assigned by the Builder and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall subject any such assignee to any of the Builder's warranties, indemnities, or any other obligations contained in this Agreement or in the Manufacturing Agreement relating to the Cars. In the event the Builder assigns its rights to receive the payments herein and/or under the Manufacturing Agreement, and B&O receives written notice thereof from the Builder together with a counterpart of such assignment stating the identity and post office address of the assignee, all payments thereafter to be made by B&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in a form satisfactory to B&O.

In the event of any assignment by the Builder of its rights to receive any payments under this Agreement or under the Manufacturing Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect to the Cars, nor subject to any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&O by the Builder. Any and all of such obligations howsoever arising shall be and will remain enforceable by B&O, its successors and assigns, only against the Builder and its successors and assigns (other than assignees as such of rights, benefits, or advantages assigned pursuant to this Agreement).

B&O agrees with the Builder that the execution by the Builder of this Agreement or the delivery by the Builder to B&O of the Cars, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Manufacturing Agreement, or impair any of the Builder's rights under the Manufacturing Agreement.

MIDWEST FREIGHT CAR COMPANY

[Corporate Seal]

Attest:

By

C. A. Mapp

G. J. Smith

THE BALTIMORE AND OHIO RAILROAD COMPANY

[Corporate Seal]

By

L. C. Roig, Jr.
Assistant Vice-President
and Treasurer

Appd. as to
last Form

12-4

Attest:

Patricia J. Hunady

STATE OF ILLINOIS)
) SS:
COUNTY OF DE WITT)

On this *21st* day of January, 1977, before me personally appeared *W. H. Stout*, to me personally known, who, being by me duly sworn, says that he is a *Secretary* of Midwest Freight Car Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Marice Maxwell

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOCA)

On this *13th* day of January, 1977, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of The Baltimore and Ohio Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Clara Masuga
CLARA MASUGA
Notary Public, Cuyahoga County, Ohio
My Commission Expires April 21, 1979